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## WHY THE "LAWES OF VIRGINIA"\*

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A few months ago, an industrious Judge, Mr. Justice Chisholm, in Nova Scotia, discovered, in some hitherto neglected records, the Minute of the Order which provided for the first establishment in what is now Canada, of a Court of Judicature to administer English law. The Minute directed that the "Lawes of Virginia" should be followed as the rule or pattern. That was in 1721, when Virginia was still British, and when its boundaries were much more extensive than at present. What was known as Canada up to the date of the British North America Act 1867, was, in 1721, French.

The "Lawes of Virginia" were therefore introduced into a part of what is now Canada, which lay to the east of French Canada, and, when the Dominion was formed by the federation of 1867, became part of Canada. It is an interesting question why the "Lawes of Virginia" were chosen rather than those of any part of New England, rather than those of Old England. Harvard University was founded in 1635, although its charter was not issued until some years later. Eastern Canada, even in those early times, had constant communication with Boston, in 1721 a flourishing town. We may therefore ask why the Laws of the Commonwealth of Massachusettes were not chosen. We may also pertinently ask by what merciful Providence, Canada has so far escaped the Blue Laws of Connecticut.

A writer of that time said that "Pennsylvania did not need either the tongue of the lawyer or the pen of the physician, both being equally destructive of men's estates and lives." This makes it plain why the Laws of Pennsylvania were not chosen.

It has been unkindly suggested that the "Lawes of Virginia" were chosen because legal fees were higher in rich Virginia

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\*A lecture delivered by J. Murray Clark, K.C., M.A., LL.D., of Toronto, Canada, at Harvard University.

than in the more thrifty New England. I shall not discuss this further than to observe, in passing, that the economic interpretation does not explain the whole of history. Honesty is much more than the best policy; honour is, at any rate with some people, a reality and not a phantasm. The economic interpretation will not explain Sophocles or Shakespeare, and cannot satisfactorily account for Thermopylae or Vimy Ridge, for Marathon, or Verdun.

One of the reasons why the "Lawes of Virginia" were chosen is undoubtedly the fact, stated by Mr. Bruce, one of its historians, that "Virginia was the foremost and most powerful of all the English dependencies of that day, and the one which adopted the English principles and ideals most thoroughly."

I need not remind you that Sir Walter Raleigh, one of the most versatile and typical of the Elizabethans, was the Founder of Virginia. The Colony, as it then was, was named after the Virgin Queen Elizabeth, whose magnificent reign constitutes one of the most glorious epochs not only in the history of England, but in the history of the world. It was the age of Shakespeare and we are too apt to forget that, while like the sun, Shakespeare eclipses his contemporaries, yet many others of his time were brilliant stars. Queen Elizabeth had as her Attorney General the great Coke who lived to draw the Bill of Rights. She was surrounded by such men as Sir Philip Sidney who, mortally wounded and yearning for the only cup of water available, passed it on from his own parched lips to those of a suffering common soldier.

She had such sailors as Drake, Gilbert, Grenville, Hawkins, Frobisher, and Cavendish to defend what Shakespeare called,

"This fortress built by Nature for herself  
Against infection and the hand of war;  
This happy breed of men, this little world,  
This precious stone set in the silver sea,  
Which serves it in the office of a wall,  
Or a moat defensive to a house,  
Against the envy of less happier lands;  
This blessed plot, this earth, this realm, this England."

Science had, in the spacious days of Elizabeth, some great names, of whom I need mention only Harvey, who discovered

the circulation of the blood, William Gilbert, and last, though not least, Bacon himself.

Queen Elizabeth had at her service such statesmen as the Cecils, and such skilled diplomatists as Walsingham, Randolph, and Knollys. To indicate the intellectual activity of the age we need mention only such a name as Bacon. In that age, if you mentioned the word "bacon" the Elizabethans would think of their great philosopher. Today, when we use the word "bacon" we think of an article of food reserved for millionaires, agitators, demagogues, fomenters of strikes, and others of the privileged classes.

Queen Elizabeth was praised by great poets, advised by great and learned lawyers, protected by great sailors, but her appointments of her Lord Chancellors have been criticized, and it is said that she insisted on having handsome men who could dance well as Lord Chancellors, rather than men of learning. In view of the Lord Chancellor's precedence and his duty to dance with her, we can forgive her preference for one who would not tread on her toes, and her anticipation of the view of Sir John Macdonald that one of the many qualifications for a Judge was that the appointee should be a gentleman.

Sir Humphrey Gilbert was granted by Letters Patent, certain rights to lands which he would colonize. He is the founder of our oldest Colony, Newfoundland, but perished on the way back, cheering his comrades by reminding them that they were as near heaven on sea as on land. His half-brother, Sir Walter Raleigh, carried on his great work, and in 1584 obtained a grant of the lands which he should discover and colonize.

The efforts under this Patent of 1584 proved unavailing, and Raleigh assigned his rights and contributed a considerable sum to enable his successors to proceed with the enterprise. It will be remembered that it was from Virginia that tobacco and potatoes were brought to England and that King James wrote what is called the "Counter-blast" against the use of tobacco, in order to foment prejudice against Sir Walter Raleigh, whom he put to death in 1616. This pamphlet proves that the first part of the saying, that King James never said a foolish thing and never did a wise one, is not correct. Sir Walter Raleigh's

project of colonization in which notwithstanding repeated failures, he never for a moment lost faith, was revived in the reign of James. Raleigh could say with Drake, in the noble words attributed to him by Noyes:

. . . . . I have heard the marching song  
Of mighty peoples rising in the West,  
Wonderful cities that shall set their foot  
Upon the throat of all old tyrannies;  
And on the West wind I have heard a cry,  
The shoreless cry of the prophetic sea  
Heralding through that golden wilderness  
The Soul whose path our task is to make straight,  
Freedom, the last great Savior of mankind.

. . . . .  
"For mightier days are dawning on the world  
Than heart of man hath known. If England hold  
The sea, she holds the hundred thousand gates  
That open to futurity. She holds  
The highway of all ages."

In the reign of James, three successive charters were issued, which it is not necessary to discuss in detail. It may, however, be pointed out that many officers of the fleet which defeated the Armada became interested in Virginia. Some of those interested in the development of Virginia were great men, and they laid deep and true the foundations of our Empire, which, as eloquently described by Webster, has "become a great power to which Rome in the height of her glory was not to be compared—a power which has dotted the whole surface of the globe with its possessions and military posts, whose morning drum-beat, following the sun and keeping company with the hours, circles the earth daily with one continuous and unbroken strain of martial airs." This is called the most eloquent description of the British Empire, but personally I prefer the description of the English statesman who said that the British Empire was "the greatest secular agency for good that the world has ever known."

The founders of Virginia are certainly among the "famous men" concerning whom Kipling exhorts us.

"Bless and praise we famous men,

For their work continueth—  
And their work continueth—  
Broad and deep continueth,  
Greater than their knowing.

It will interest you to know that the Virginia enterprise was described as "an action concerning God and the advancement of religion, the present ease, future honour and safety of the Kingdom, the strength of the navy, the visible hope of a great and rich trade, and many secret blessings not yet discovered."

The Raleigh Patent, it is said, was drafted by the great Coke, and it provided that those inhabiting the territories which Raleigh should acquire "shall and may have all the privileges of denizens and persons native of England and within our allegiance in such like ample measure and in such manner and form as if they were borne and personally resident within our Realme of England." This memorable document also gave full power and authority to govern and rule "according to such statutes, lawes and ordinances as shall be by him, the said Walter Raleigh, his heirs and assigns, and any or all of them, devised or established for the better government of the said people as aforesaid."

"So always as the said statutes, lawes and ordinances be as neere as conveniently may be agreeable to the form of the lawes, statutes, government and policie of England."

There are some other provisions not necessary to quote as to religion, and forbidding the drawing away of the subjects or peoples of those lands or places from the allegiance of the Queen.

If you have followed carefully what I have read, you will observe that Raleigh anticipated the self-government which now prevails in all parts of the British Empire capable of exercising self-government. That certainly includes Canada, where for many years we have had complete self-government in domestic affairs. It is true that before the war, questions of foreign policy were decided by the British (Imperial) Government, as trustee for the whole British Empire. The Ministers of the Imperial Government are responsible to the British

Parliament, that is, to the electors of England, Wales, Scotland and Ireland. It was felt that some adequate remedy must be found for this condition of affairs, which would give Canadians as full and complete rights with regard to foreign policy, to the question of peace and war, as Englishmen, Welshmen, Scotchmen and Irishmen. Such a remedy, which there is not time to describe, was found during the great War. In future, Canada will have an effective voice on all questions of foreign policy which affect her.

Canada's services and sacrifices in the War fully entitle her to the equal partnership she has achieved in the commonwealth of nations we call the British Empire, of which Canada is, and will, I hope, ever remain, an integral part.

You will pardon this digression. I was proceeding to point out that the Common Law of England, founded on and indeed embodying the principles of justice and liberty, and brought from the old world to the new, now prevails not only in the English-speaking part of the British Empire but also throughout the United States, except in Louisiana. It is not necessary for my purposes here to trace further the history of the Virginia Charter from which I have quoted, or to state in detail the steps to what was effectively described by Sir Frederick Pollock, one of the great Jurists of our time, as the expansion of the Common Law.

Perhaps I should explain that up to the end of the last century, Western Europe and America, or at least all the parts where there was "The Reign of Law" were governed by one of two systems of law, the Civil Law founded on the Roman Law, and the Common Law of England.

While I prefer the Common Law, I am not criticizing the Civil Law, or the Roman Law on which it was founded. The Code of Justinian and the Napoleonic Code are among the noblest and most beneficent achievements of the human intellect. The principles of the Roman Law now govern a large part of the civilized world, not by reason of Imperial power but by the imperial power of reason, if we may so paraphrase the famous saying of Portalis.

"Non ratione imperii, sed  
imperio rationis."

The Common Law, as I have said, is founded on the principle of liberty. Now private property is an essential attribute of liberty, as of personality. If you eliminate profit, according to one of the current fallacies which has already done much mischief, you necessarily eliminate private property, and you destroy the very basis and foundation of our civilization, indeed its very structure. Further, if you abolish private property, you necessarily abrogate the prohibition "Thou shalt not steal." And if you bear in mind that the moral law is one and indivisible, you will perceive that if you eliminate profits and private property, you abrogate and eliminate the whole moral law and destroy the very foundations of society.

The French Socialists were therefore logical when they advocated that God should be eliminated and that the idea or hypothesis of God should be "expelled from human brains." Socialism is a barren materialism and necessarily "denies wholly and unreservedly any spiritual purpose in the universe." The attempts to make such a sordid and dreary materialism the basis of society will fail, but will cause much misery and unrest.

It is, therefore, not an accident that the Soviets in Russia should have decreed Socialisation of women—in other words, the slavery of women—for Socialism is destructive of the family, as of all else that is worth while. I use the term Socialism in its correct sense, in the sense in which it was advocated by Karl Marx and is advocated in Canada and the United States.

The word Socialism is sometimes used in a loose and inaccurate way, but if the term is used accurately such a phrase as Christian Socialism is seen to be a contradiction in terms. You might as well talk of Christian burglary. The term Socialist should be reserved for the numerous followers of Karl Marx, who was an avowed enemy of religion, marriage, and the family, as well as of property. Much confusion of language, and consequent confusion of thought, resulting in serious mischief, have been caused by the indiscriminate denunciation of beneficial reforms, as socialistic. This, however, does not apply to what is advocated by self-styled Socialists of the demagogic variety.

It is to be remembered that the changes and plans now pro-



posed by the demagogues, have been tried before with disastrous results. The audiences who heard Shakespeare's plays, and who included some of the founders of Virginia, understood his account of Jack Cade, whose proposals anticipated much of what is now suggested; understood the conditions of real progress and permanent prosperity. Much of what is now termed new is old; and much that is called progressive, so far from being truly progressive, involves the painful return to primitive barbarism and savagery.

Nowhere is the inevitable result of Bolshevism (which is an ugly form of Socialism), better described than in the famous speech of Ulysses in the First Act of *Troilus and Cressida*, indeed, he described what may be regarded as the main cause of our present unrest in the words

“untune that string,  
And, hark, what discord follows!”

Somewhat later an English philosopher accurately described the conditions under Socialism when fully applied, in describing the state of war (in which Socialism must ultimately result) as follows:

“There is no place for industry because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation, no commodious building, no account of time, no art, no letters, no society, and, which is worst of all, continued fear and danger of violent death, and the life of man solitary, poor, nasty, brutish and short.”

Those who desire to avert such a destruction of liberty, such a calamity to our civilization, should study very carefully Macaulay's letter which I shall read to you in a few minutes.

I have also said that the Common Law embodies the principles of justice. Some draw a sharp distinction between law and justice. The story is told that an Eastern Corporation in the United States retained an idealist lawyer to defend an action against it. The lawyer, being young and inexperienced, believed the Directors who informed him that the action was an unscrupulous attempt to defraud the Corporation. He won, but, instead of reporting in the usual way, telegraphed “Truth and justice have prevailed.” When the report was received, the Directors were in meeting assembled and the astonished

lawyer was perplexed by receiving a prompt reply "Appeal immediately."

There is indeed a very proper distinction between abstract justice and law. Lying is a very reprehensible and mischievous practice. Yet there are sound reasons, quite apart from the inadequacy of the jail accommodation, why the law should not attempt to imprison all liars. There is not time to expound these reasons but one can say that it is a monstrous absurdity for any one to attempt to legislate without a firm grasp of the principles of legislation.

The Germans, after a long study of what Professor Holland of Oxford aptly designated "Jurisprudence in the air," devised a code of their own which came into effect in 1900, when they thought the 20th century would belong to Germany, but in the rest of Western Europe and in all the civilized parts of America the Common Law or the Civil Law still governs.

Bismarck observed that one of the most important facts of our time was that the people of the United States speak the English language. That indeed is a vitally important fact because liberty inheres in the English language. For in the statesmanlike words of the great English poet, Wordsworth:

"We must be free or die, who speak the tongue  
That Shakespeare spake."

It is to my mind even more important that the United States and the British Empire are so largely governed by the Common Law for the vital fact that we have common ideals of justice is the true basis of the unity of the English-speaking peoples upon which, in reality, depends the advancement of civilization, in truth its very security. The great Charter of Liberty was achieved before the division of the English-speaking peoples and some of its main provisions have been perpetuated in the Constitution of the United States. I use the word "perpetuated" advisedly because Bryce, with penetrating insight, pointed out that the United States Constitution has its roots deep in the past and though in form, of rare excellence, it is the work of the Philadelphia Convention, yet inasmuch as it embodies fundamental principles and constructive statesmanship it will survive as long as liberty endures.

Magna Charta, the Bill of Rights, and, indeed, the whole Common Law, belong to all branches of our race as also do such famous names as Shakespeare, Drake, Hawkins, Gilbert, Raleigh, Bacon, Sidney and Coke, and even the great men of a later date such as Milton and Harrington.

The living principles of justice and liberty embodied in Magna Charta are the precious heritage of the English-speaking peoples, for which we in Canada fought in the Great War, and which we must hand on, unimpaired and undefiled, to our children and children's children. When speaking of the United States, Macaulay expressed a very decided opinion that the principles of democracy, if put in practice, would inevitably lead to destruction. Those principles have been applied in England and Canada even more fully than in the United States. There is truth as well as wit in the remark of the Prince of Wales in Washington that he found the United States almost as democratic as England. As, therefore, what Macaulay says is quite as applicable to Canada and England as to the United States, and should be studied with great care, I shall read his letter in full.

Copy of letter of Macaulay to H. S. Randall, 23rd., May, 1859: The four volumes of the "Colonial History of New York" reached me safely. I assure you I shall value them highly. They contain much to interest an English as well as an American reader. Pray accept my thanks, and convey them to the Regents of the University.

You are surprised to learn that I have not a high opinion of Mr. Jefferson, and I am surprised at your surprise. I am certain that I never wrote a line, and that I never, in Parliament, in conversation, or even on the hustings—a place where it is the fashion to court the populace—uttered a word indicating an opinion that the supreme authority in a State ought to be entrusted to the majority of citizens told by the head; in other words, to the poorest and most ignorant part of society. I have long been convinced that institutions purely democratic must, sooner or later, destroy liberty or civilization, or both. In Europe, where the population is dense, the effect of such institutions would be almost instantaneous. What happened lately in France is an example. In 1848 a pure democracy was established there. During a short time there was reason to expect a general spoliation, a national bankruptcy, a new parti-

tion of the soil, a maximum of prices, a ruinous load of taxation laid on the rich for the purpose of supporting the poor in idleness. Such a system would, in twenty years, have made France as poor and barbarous as the France of the Carlovingians. Happily the danger was averted; and now there is a despotism, a silent tribune, an enslaved press. Liberty is gone, but civilization has been saved. I have not the smallest doubt that, if we had a purely democratic government here, the effect would be the same. Either the poor would plunder the rich, and civilization would perish, or order and prosperity would be saved by a strong military government and liberty would perish. You may think that your country enjoys an exemption from these evils. I will frankly own to you that I am of a very different opinion. Your fate I believe to be certain though it is deferred by a physical cause. As long as you have a boundless extent of fertile and unoccupied land, your labouring population will be far more at ease than the labouring population of the Old World, and, while that is the case, the Jefferson politics may continue to exist without causing any fatal calamity. But the time will come when New England will be as thickly peopled as old England. Wages will be as low, and will fluctuate as much with you as with us. You will have your Manchesters and Birminghams, and in those Manchesters and Birminghams hundreds of thousands of artisans will assuredly be sometimes out of work. Then your institutions will be fairly brought to the test. Distress everywhere makes the labourer mutinous and discontented, and inclines him to listen with eagerness to agitators who tell him that it is a monstrous iniquity that one man should have a million while another cannot get a full meal. In bad years there is plenty of grumbling here, and sometimes a little rioting. But it matters little. For here the sufferers are not the rulers. The supreme power is in the hands of a class, numerous indeed, but select; of an educated class; of a class which is, and knows itself to be, deeply interested in the security of property and the maintenance of order. Accordingly, the malcontents are firmly yet gently restrained. The bad time is got over without robbing the wealthy to relieve the indigent. The springs of national prosperity soon begin to flow again: work is plentiful, wages rise, and all is tranquillity and cheerfulness. I have seen England pass three or four times through such critical seasons as I have described. Through such seasons the United States will have to pass in the course of the next century, if not of this. How will you pass through them? I heartily wish you a good deliverance. But my reason and my wishes are at war, and I cannot help foreboding the worst. It is quite plain that your government will

never be able to restrain a distressed and discontented majority. For with you the majority is the government, and has the rich, who are always a minority, absolutely at its mercy. The day will come when in the State of New York, a multitude of people, none of whom has had more than half a breakfast, or expects to have more than half a dinner, will choose a Legislature. Is it possible to doubt what sort of a Legislature will be chosen? On one side is a statesman preaching patience, respect for vested rights, strict observance of public faith. On the other is a demagogue ranting about the tyranny of capitalists and usurers, and asking why anybody should be permitted to drink champagne and to ride in a carriage while thousands of honest folks are in want of necessities. Which of the two candidates is likely to be preferred by a working man who hears his children cry for more bread? I seriously apprehend that you will, in some such season of adversity as I have described, do things which will prevent prosperity from returning; that you will act like people who should in a year of scarcity devour all the seed-corn and thus make the next year a year not of scarcity but of absolute famine. There will be, I fear, spoliation. The spoliation will increase the distress. The distress will produce fresh spoliation. There is nothing to stop you. Your Constitution is all sail and no anchor. As I said before, when a society has entered on this downward progress, either civilization or liberty must perish. Either some Caesar or Napoleon will seize the reigns of government with a strong hand, or your Republic will be as fearfully plundered and laid waste by barbarians in the Twentieth Century as the Roman Empire was in the fifth, with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without and that your Huns and Vandals will have been engendered within your own country by your own institutions.

Thinking thus, of course I cannot reckon Jefferson among the benefactors of mankind. I readily admit that his intentions were good and his abilities considerable. Odious stories have been circulated about his private life; but I do not know on what evidence those stories rest, and I think it probable that they are false or monstrously exaggerated. I have no doubt that I shall derive both pleasure and information from your account of him.

I have the honour to be, dear sir, your faithful servant,

T. B. Macaulay.

Let me give you one or two reasons why I think Macaulay was wrong and why I believe that, notwithstanding the formi-

dable strength of the forces of lawlessness, we can now say confidently what Wordsworth said over one hundred years ago:

"It is not to be thought of, that the Flood  
Of British Freedom, which to the open sea  
Of the world's praise from dark antiquity  
Hath flowed, 'with pomp of waters, unwithstood,'  
Roused though it be full often to a mood  
Which spurns the check of salutary bands,—  
That this most famous stream in bogs and sands  
Should perish; and to evil and to good  
Be lost forever."

Freedom will not, as some fear and many desire, be overwhelmed in the bogs of Bolshevism or in the sands of Syndicalism. Both Bolshevism and Syndicalism are destructive of liberty and both inevitably result in cruel tyranny, but we cannot on this account say that they will not succeed. We cannot expect that our freedom, based as it is on the unquestionable supremacy of the civil power and the universal rule of equal law, can of itself continue as a matter of course. The "leave to live, by no man's leave, underneath the law" is the result of a long and painful struggle and can be maintained only by constant vigilance and determined effort

Scientists tell us that there is always a danger of reversion to inferior types; so in matters of government there is constant danger of usurpation of arbitrary power. We cannot too often reiterate or too strongly emphasize the warning of that great pro-American English statesman, the immortal Irishman, Edmund Burke:

"Liberty to be enjoyed must be limited by law; for where law ends there tyranny begins: and the tyranny is the same, be it the tyranny of a monarch or of a multitude; nay, the tyranny of the multitude may be the greater, since it is multiplied tyranny."

Let us now refer for a moment to my introductory observations. After the defeat of the Armada in 1588, the time had brought to ripeness the "thousand thousand blessings" which according to Shakespeare, Cranmer made the infant Elizabeth promise to England. The prophecy had been fulfilled that

"In her days every man shall eat in safety,  
Under his own vine what he plants; and sing  
The merry songs of peace to all his neighbors."

Indeed, there was also fulfilled the earlier prophecy made by Richmond on Bosworth field that the time to come would be enriched

"With smiling plenty, and fair prosperous days."

Shakespeare was showing "the very age and body of the time his form and pressure" when he spoke of "Happy England."

Elizabeth died in 1603, but if we adopt the view of one historian that the Elizabethan age ended with the death of Raleigh—the greatest man of that age, if we omit Shakespeare who belongs to all ages, for Raleigh was both scholar and soldier, a skillful sailor and one of the most sagacious and far-sighted statesmen of our race—the date would be 1616. Yet in 1653, thirty-seven short years after the death of Raleigh, that same England was governed by a Parliament which was dominated by Praise-God Barebone. We must not condemn Barebone too severely, for his companions accounted him a godly man, one of the saints, and he certainly had good intentions, though of the kind with which the infernal regions are said to be paved.

The self-styled Saints, an intolerant and intolerable body of narrow-minded and misguided men, destroyed the Commonwealth of Cromwell and Milton, jeopardized the life-work of broad-minded patriots like Hampden, Elliott and Pym, and were the real cause of the restoration of the arbitrary rule of the Stuarts in the person of Charles II, their most profligate representative.

The reign of the Saints was followed by a sure and swift reaction and, within ten years after Barebone's Parliament ended in popular contempt and general derision, there had begun the era of the most demoralizing licentiousness that the history of England had ever known.

When the present wave of hysteria and repression will end no one knows, but we may all be comforted with the thought that if the good old English principle of Liberty, the eternal principle of Freedom, is not restored to our children it certainly

will be to our grandchildren. While no one can definitely fix the exact time when sanity will be restored to perplexed humanity, many think a severe depression is a condition precedent. It is, therefore, useful to bear in mind that the default of the City of Hamilton, which may be said to mark the depression of that period, occurred in 1861, five years after the close of the Crimean War, and that the severe depression which followed the inflation during and following the Civil War, did not reach its height until well into the seventies, more than five years after the end of the war in the United States. Meantime, we may console ourselves by remembering

"How small, of all that human hearts endure,  
That part which laws or kings can cause or cure."

Without unduly prolonging my address I could not elaborate all the reasons for my conclusions that the pessimistic estimate of Macaulay is wrong, but I shall briefly give you two or three.

In Virginia they tried the Communism now so loudly advocated. It resulted, as it always has resulted, and ever will result, in what are known in history as the "starving years."

In Russia, Bolshevism, which is an ugly form of Socialism, speedily resulted in starvation. Bolshevism in name is new but in grim reality is very old and will persist as long as murder and robbery continue. Bolshevism, I need not point out, is the enemy of the Common Law and of the principles upon which it is founded; especially is it the enemy of liberty. It may be said that many will not heed the lessons of history and must learn by experience. Virginia survived the experiment and I think the people of Canada and of the United States will also learn before it is too late. The sooner we learn, the less of misery and distress will be necessary in the learning.

Recently there appeared an authoritative statement that in five years the State Legislatures of the United States passed over 62,000 statutes. It was said this should be described as "The Rain of Law" not "The Reign of Law." So careful are we of our human bodies that we allow only a surgeon with skill and scientific training to operate on the meanest citizen. The State is properly described as a body politic, and a statute



which is or should be a solemn and carefully considered exercise of legislative sovereignty is quite as important for the State as an operation on the body of a private citizen. It is not for me to discuss here the 62,000 Statutes above referred to but, as we know, the United States have survived and I do not think that all the attacks of the Bolsheviks and Anarchists, or what is most dangerous of all, of the demagogues, will fatally impair either your or our virile vitality.

Let me add one example from my own city which, at the time, made a profound impression on myself, an impression which deepens as the years go by. Some time ago I had, as counsel, charge of an action to set aside a deed on the ground that the grantor was insane when he signed it. One of our experts (alienists, you call them) asked me if I had read the speech of a certain candidate for the Chief Magistracy of Toronto. I answered that the headlines of the speech showed it was such balderdash that I had not wasted time in reading it. The expert advised me to read the speech carefully, and added, if you understand what I have been telling you, and if you really understand your case, you will be able yourself to detect the evidences of insanity in the speech. "I can tell you the candidate will be in the asylum for the insane" within the number of months he specified, and he said he would venture a prediction outside of his professional knowledge and that was that the speech containing the evidence of insanity would elect the candidate. The candidate was in the asylum within the number of months specified, and he was elected. As a citizen of Toronto, I will not admit that his success in the election was because of the undue optimism of the speech but it certainly was after the speech. Can it be said that the voice of the majority was the voice of God? I think not. His election was due to the neglect of their civic duty by the business men of Toronto, but I do think it was in strict accordance with the laws of God that these same business men should, in consequence of their neglect of their civic duties, have to pay excessive taxes for many years to come. Indeed, the weight of the debt due to this neglect will be a burden not only on those who neglected their civic duties but on their children and chil-

dren's children. But, notwithstanding all this, Toronto is still a prosperous community, where, in spite of all that is said and done, most of the legal disputes which arise are still settled by our sagacious, tolerant and patient Lady of the Common law. The fact that over 60,000 of our citizens volunteered to fight for liberty and civilization when the Germans invaded Belgium, proves that the people in any crisis which they understand, will be found fundamentally sound. Moreover, Admiral Lord Jellicoe highly commended the assistance given to the Admiralty by the head of one of the Departments of the University of Toronto, especially in the fight against the submarines.

Another citizen of Toronto, a distinguished chemist who had spent many years experimenting for peaceful purposes on the very kinds of gas which the Germans used in violation of the Hague Convention was—happened is the weak word used—at Ypres at the very time the Germans first used poisonous gas. Toronto men were conspicuously and honourably present when they blocked the way to Calais of what has been described as the mightiest army organized in the history of the world, thereby, according to Joffre, a most competent judge, "saving the situation." A graduate of the University of Toronto, Colonel John MacCrea, wrote what many describe as the finest poem of the war, "In Flanders Fields."

We have, therefore, a well-grounded confidence that such men will not fail in the stern fight for liberty and civilization which is in front of us.

We need, however, to bear in mind that the fight will be a stern one and that in such a fight no one ought to remain neutral. The position could hardly be better put than by Samuel Harden Church, of Pittsburgh, who, in another connection, said:

"You will remember that Dante in the *Inferno* found a hell beneath all other hells prepared for those timid beings who insisted on being neutral in the everlasting fight between good and evil. This war is a fight between those forces of good and evil."

While we enjoy the inestimable blessings of liberty, safe-

guarded by the "peaceful reign of organized justice," as Balfour happily phrased "The Reign of Law," it is necessary to guard these blessings, and of late years there have been certain tendencies which at one time threatened to destroy individual liberty, undoubtedly the fundamental basis of free institutions. Men of science tell us that no two human beings ever have been or ever will be exactly alike and it would therefore be the most fatal thing that could happen to the human race to enforce a dull and deadly uniformity.

Fortunately, the Common Law is a living thing and capable of growth, capable of being adapted to all the needs and circumstances of liberty-loving and justice-loving peoples. We are too apt to disregard the warning of Shakespeare that "the insolence of office" is one of the most grievous ills to which "flesh is heir," and to overlook his other statement based equally on his profound knowledge of human nature that, when vested with arbitrary powers, the typical official,

"Drest in a little brief authority  
Most ignorant of what he's most assur'd. . .  
. . . . .  
Plays such fantastic tricks before high heaven  
As make the angels weep."

Many thoughtful persons view with alarm the growing custom of vesting in irresponsible bodies, legislative as well as administrative powers and making their arbitrary decisions above the law—not subject to appeal, as the phrase is.

After a long fight it was established that even the King was not above the law, and our forefathers abolished one Star Chamber. This generation of English-speaking peoples is multiplying Star Chambers. When they become too oppressive and tyrannical, as most certainly they will, they can in turn be abolished. While the mischief done will be annoying, and to many distressing, I do not believe that in any case it will be fatal. The living principles of liberty and justice embodied in the Common Law have enabled our race to survive many dangers in the past and I, at any rate, have no doubt they still have

sufficient vitality to ensure that we shall overcome the grave perils that menace our future.

In the past, every real crisis in the history of the English-speaking peoples has revealed a man prepared and able to save the situation.

Some of the founders of New England expressed the opinion that "the colonies could never be happy or easy whilst the French were masters of Canada." In the fullness of time the man appeared in the person of the great Pitt.

He chose Wolfe, whose victory at Quebec made the United States possible, according to the French philosopher, inevitable. A critical question of navigation of the St. Lawrence was involved, but Wolfe had Cook, the famous navigator, at his right hand. In this struggle, George II had no more loyal subject than George Washington. As this enterprise had been undertaken at the request of the Colonists and for their benefit, it seemed only right that the Colonists should pay part of the cost. The stupidity and want of statesmanship of the British Government of the day raised an issue on which, in the opinion of the wisest men in Great Britain at the time, including Burke, the Colonists were right and the British Government wrong.

It is unnecessary to describe the result, but it is pertinent to observe that in the critical years which followed the Independence of the United States they had the far-sighted advice and statesmanlike guidance of Alexander Hamilton, whose work, as F. S. Oliver has shown, can now be studied with great advantage by those interested in the permanence of the British Empire.

To interpret the Constitution framed by Hamilton, Madison and their associates, appeared in due time Chief Justice John Marshall, the greatest Jurist this continent has yet produced. His statesmanlike exposition and development of the federal principle constituted an invaluable service, not only to the United States, but also to humanity, and especially to the English speaking peoples, who must solve many of their problems by applying the federal principle.

If you bear in mind that the founders of Virginia were

friends and associates of Shakespeare, Raleigh and Coke, and that the Virginia Bench and Bar upheld the noble traditions of the English Bench and Bar, you will agree with me that it was no accident that Chief Justice Marshall was one of the great Virginians.

In passing, we may recall the statement of Burke that more copies of Blackstone's Commentaries on the Laws of England were sold in America than in England. When in Toronto recently, Lord Finlay mentioned that the son of an English friend of his had decided to study law at the Harvard Law School with a view to practicing in England. This, rightly considered, is a magnificent triumph for our Lady of the Common Law. Many other instances of the hour bringing the man, many other reasons for the conclusion that the evils prophetically described by Macaulay with such startling precision will be overcome, might be given if time permitted.

In the late war there were many instances of thoughtful self-sacrifice on the part of men, aye of women, too, which quite equalled that of Sir Philip Sidney on Zutphen field, which made his memory immortal. There was seamanship and skill not only by professional sailors, but by the men of our Merchant Marine and by fishermen, which quite matched the most daring deeds of Drake. There was heroism and endurance by the soldiers and aviators of the Allies which surpassed anything previously recorded in history.

Who dare say that all this has been in vain? Notwithstanding all the ugly and perplexing appearances, if we use the words in the profound sense in which he intended them, we can confidently say with Browning:

"God's in His heaven:  
All's right with the world."